whom may be attached a pupil for instruction in law. Strictly speaking such branch office would be an "office in the Federation of a practising practitioner" of the required standing, in so far as legal liability and responsibility is concerned. If, however, the accent is on the practitioner, and not on the office, as appears to be the clear intention of section 5(3), then the exercise of remote control cannot in the nature of things make up for direct personal supervision of the pupil by the master attending at his office regularly. The words "office in the Federation of a practising practitioner of not less than seven years' standing" in section 5(3) must therefore be read as a whole and be taken to mean only the office at which he carries on his regular practice. They must also be read in the light of the provisions of section 6(1)(c) and of Form "B" in Schedule II to the Ordinance, paragraph 2 of which is as follows:

"2. . . . . (hereinafter called the applicant) is personally known to me. He has during the period from ..... to ..... attended *my office* at ..... on not less than ..... days."

Here, the certificate of Mr. M. B. Brash is in the following terms:

"2. Joseph Lai Khee Sin (hereinafter called the applicant) is personally known to me. He has during the period from 12th September, 1960 to 13th March, 1961 attended at the office of Allen & Gledhill, Oversea-Chinese Bank Building (top floor), Kuala Lumpur, *of which I am the legal consultant and with whom I practise*, on not less than 158 days."

Since Mr. Brash admittedly is neither a partner nor an assistant in Allen & Gledhill, and his room in the latter's office is, as it were, nothing more than a business *pied-a-terre*, it may truly be said that he has no status whatsoever in that firm, any more than has any other counsel who may be briefed by the firm from time to time to appear on their behalf. This tenuous connection between Mr. Brash and Allen & Gledhill does not, in my opinion, qualify the office of that firm as one fulfilling the requirements of section 5(3). The principle which I feel bound to apply in this case is that expressed by Lord Selborne in *Caledonian Railway* v. *North British Railway*, (2) where he said:

"The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the Legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated."

At the hearing Mr. Rintoul tendered a certificate by Mr. T. E. Atkinson who was a senior partner of Allen & Gledhill until November 23, 1960, but whose retirement to go abroad left the petitioner no option but to obtain his certificate from Mr. Brash. I am satisfied that the petitioner — for whom I have the greatest sympathy — duly attended and received instruction in law for the period from September 12, 1960 to November 23, 1960, which complied with the requirements of section 5(3). That period falls short of the requisite six months.

An affidavit by Mr. R. K. Booker, a partner of Allen & Gledhill, Singapore, does not carry the matter any further.

I am thus satisfied that the objection of the Bar Council and Bar Committee is well founded and accordingly I must with regret disallow the petition.

*Petition disallowed.*

## *Re* HADJEE YOUSOF

[O.C.J. (Chua J.) June 16, 1961]

[Singapore — Originating Summons No. 59 of 1960]

*Will — Construction — Whether permission to stay included a right to let.*

The plaintiffs, executors and trustees of the will of the deceased, took out the present summons to ascertain whether the defendant, the son of the deceased was entitled to let out the house or portion thereof in view of Clause 11 of the will of the deceased. That clause reads:

"I devise unto my trustees my lands and house No. 717 North Bridge Road, . . . . . upon trust to permit my said son Mohamed and his wife and children to reside therein and use the said effects and things free of rent until the date of distribution."

**Held:** the testator's sole intention was that the defendant, his wife and children should reside in the house rent free until the date of distribution. This was only a licence personally to reside in the said house rent free and it did not carry with it the right to make any profit.

*Cases referred to:—*

(1) *Rabbeth* v. *Squire*, 45 E.R. 157.
(2) *Mannox* v. *Greener*, L.R. 14 Eq. 456.
(3) *Re Gibbons* [1920] 1 Ch. 372.
(4) *Maclaren* v. *Stanton* (1858) 27 L.J. Ch. 442.
(5) *Re Anderson* [1920] 1 Ch. 175.
(6) *May* v. *May*, 44 L.T. 412.

ORIGINATING SUMMONS under O.LII r.1.

*G. H. Po* for the plaintiffs (trustees).

*Y. R. Jumabhoy* for the defendant.

*J. Pillai* for the beneficiaries.

*Cur. Adv. Vult.*

**Chua J.:** The plaintiffs in this case are the executors and trustees of the Will of Hadjee Yousof bin Hadjee Mohamed Noor deceased.

Clause 11 of the testator's Will provides as follows:—

"I devise unto my Trustees my lands and house No. 717 North Bridge Road, Syonan-to, together with all the furniture, crockery, plate, pictures, effects and things of whatsover nature or kind which shall be in or about the said house No. 717 North Bridge Road at the time of my death (hereinafter referred to as 'the said effects and things') UPON TRUST to permit my said son MOHAMED and his wife and children to reside therein and use the said effects and things free of rent until the date of distribution."

The defendant is the said Mohamed, the son of the testator, and he is now occupying No. 717 North Bridge Road, (which I will refer to as the said house) which is a three-storey house, with his wife and three of his children. The defendant has five other children who are married and are living with their families elsewhere. All the children of the defendant are over 21 years of age except one.

Under the provisions of clause 12 of the Will the income arising from certain houses devised to the trustees until the date of distribution is *inter alia* to be used in payment for the electricity and water used by the said house.

Sometime in October, 1959, the defendant let out the front portion of the ground floor of the said house to a Chinese, who carries on business there. Certain beneficiaries of the estate of the deceased objected to this letting out by the defendant.

The plaintiffs have taken out the present summons asking whether the defendant is entitled to let out the said house or any portion thereof.

Counsel for the defendant submitted that the intention of the testator was to give his son, the defendant, a house to reside in free of rent and to profit from it and that as long as the defendant is residing in it he is permitted to let out part of the house. Counsel pointed out that there is no gift over in the event of the house being let out.

I will now refer briefly to some of the authorities cited by counsel.

In *Rabbeth* v. *Squire*, [1] it was decided that a direction in a Will that two of the testator's sons might have "the use and occupation" of part of the devised lands, paying a rent and some outgoings, but that in default of payment, or if they converted the marsh land into tillage, they should no longer have possession, did not require personal use and occupation but permitted the two sons to let the lands.

In that case Lord Chelmsford L.C. came to that decision because that was the effect of the gift of the use and occupation and there was nothing in the terms of the other part of the Will to show clearly that it was the intention of the testator that the sons should personally occupy the lands.

In *Mannox* v. *Greener*, [2] the testator by his Will provided for his wife, *inter alia*, as follows: "In addition to this I leave her all my furniture, plate, linen, pictures, &c., in my house at Stratford-on-Avon at my decease, and the free occupancy of any house in my possession, for her life, free of any payments or charge whatever, after which the effects to revert back to the estate." It was held that the free occupancy of the house entitled the wife either to reside in it or to let it during her life.

In *Re Gibbons*, [3] the testator by his Will, after providing for the upkeep of his house as a residence for the family until the youngest of his children came of age, gave successive options to the children of "occupying and enjoying the use" of the house. The eldest son to whom priority was given exercised the option. It was held that the gift was not of a mere option to reside and upon the exercise of the option the son became beneficially entitled to possession of the settled property and was therefore a tenant for life under the settlement created by the Will and he had the powers of a tenant for life under the Act including a power to let. Both Lord Sterndale M.R. and Warrington L.J. were of the opinion that "to occupy and enjoy the use of" a house extended to letting the house, unless there was something in the Will to show that the meaning of these words was restricted.

On the other hand, in *Maclaren* v. *Stanton* [4] (which was not cited to me) the testator devised a house to trustees upon trust to offer to his children, according to seniority, "the use and enjoyment of" the house, rent free for so long as he or she should please. It was held that a personal occupation was intended and that the house or any part of it could not be let.

In *Re Anderson*, [5] the testator by his Will directed that his widow should, during her life or widowhood, be entitled "to use and occupy" his residence "for her own personal use and occupation." The wife never lived at the house and when it was sold by the trustees of the Will she joined as a party to the conveyance, which recited that she had signified her intention of not wishing to use the house as a residence and was willing to renounce such right and to join in the conveyance. It was held that on the construction of the Will she was not entitled to let the house and receive the rent or to receive the income of the proceeds of sale but that she had only an option, liberty or licence to occupy the house personally.

In *May* v. *May*, [6] the testator by a Codicil to his Will made this provision, "I also direct that my said wife may reside rent free in my present residence during her life." The widow lived in the house for some years after the testator's death and then let it out and received the rent. It was held that the widow, in so doing. was not residing in the house within the meaning of the Codicil and that she was not entitled to retain for her own use the rents received from the house but must pay them over to the trustees of the Will.

So much for the cases cited.

The main question in this case is: What interest, if any, has been given to the defendant?

It is submitted that the defendant, his wife and his children residing there are tenants for life. I do not think that they are. They are permitted to reside in the house not for their lives but until the date of distribution. In any case a tenant for life does not have the power of leasing under our Settled Estates Ordinance, (Cap. 20) which he has under the English Settled Land Act, 1925.

Then it is said that the defendant as long as he is residing in the said house can let out a portion of the said house. With all respect, I am unable to take that view. If the defendant can let out a portion of the said house then his wife or any of his three children who are residing there can also do likewise. This will certainly defeat the rights of the five children of the defendant, who are at present not residing in the said house but who have a right, at any time

before the date of distribution, to live in the said house.

The English cases that I have set out above, except *May* v. *May*, [6] are not analogous to the present case.

The words used here are "to reside therein." It is clear that the testator's sole intention was that the defendant, his wife and his children should reside in the house rent free until the date of distribution. This is in my opinion a gift of a right personally to reside in the said house and it does not carry with it the right to make any profit.

In my view the defendant has only a licence personally to reside in the said house rent free until the date of distribution and he is not at liberty to let the said house or any part of it.

*Order accordingly.*

Solicitors: *Wee Swee Teow & Co.; Mallal & Namazie; Pillai & Co.*

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## *Re* BUKIT SEMBAWANG RUBBER CO. LTD. & SEMBAWANG ESTATES LTD.

[O.C.J. (Chua J.) July 5, 1961]

[Singapore — Originating Motion No. 12 of 1961]

*Mandamus — Crown servant — When lies — No specific legal remedy — Delay amounting to repeal.*

*Land acquisition — Award by Collector — Delay — Application for mandamus — Land Acquisition Ordinance (Cap. 248), ss.10 and 53.*

In this case the applicants sought for an order of mandamus directed to the Collector of Land Revenue compelling him to comply with the provisions of section 10 of the Land Acquisition Ordinance and to make an award in respect of the said land, alternatively compelling him in exercise of the powers contained in section 53(1) of the said Ordinance to withdraw from the acquisition of the said land and to determine and pay all such amounts by way of compensation and costs as may be due to the applicants under the provisions of section 53 of the said Ordinance. It was contended for the respondent that *mandamus* will not lie against the Collector because (1) he was a Crown servant, (2) the application was for the payment of money by the Crown and consequently *mandamus* would not lie against the Crown, (3) the applicants had not exhausted all the available remedies, (4) it was purposeless for the Collector to make an award as he would not be in the position to pay on the award because the Government had frozen the budget, (5) while there had been a demand the Collector had not refused to make an award, and (6) the writ might be made inoperative by certain actions which were beyond the control of the Collector.

**Held:** (1) the proposition that *mandamus* would not lie against a Crown servant is not true if he is acting under a statutory power which imposes upon him a duty to the public. The Collector is vested by statute with public duties affecting the rights of private persons and he is under section 10 of the Land Acquisition Ordinance in a *quasi*-judicial capacity to decide between the subject and the Crown;

(2) this application is not to enforce payment of money by the Crown but to enforce the making of an award by the Collector which it is the duty of the Collector to make;

(3) neither an application to the Minister nor an application by way of petition of right to the Yang di-Pertuan Negara is a specific legal remedy and they cannot therefore be a bar to this application;

(4) there is nothing to prevent the Collector from making the award. If the Collector has no funds then he need not take possession of the said land and he need only pay 8% interest on the award until it is paid. In any event the budget was frozen in 1958 and there is no evidence that there are at present no funds available;

(5) the Collector had been guilty of such delay as to amount to a refusal to make an award;

(6) although the Court will not issue a *mandamus* if it is futile, its issue will not be futile in this case.

*Cases referred to:—*

(1) *The Queen* v. *The Secretary of State for War* [1891] 2 Q.B. 326.

(2) *The Queen* v. *The Lords Commissioners of the Treasury*, L.R. 7 Q.B. 387.

(3) *The Queen* v. *The Commissioners for Special Purposes of the Income Tax* (1888) 21 Q.B.D. 313.

(4) *R.* v. *The Commissioners for Special Purposes of Income Tax* [1920] 1 K.B. 26.

(5) *Re The Bristol & North Somerset Railway Co.* (1877), 3 Q.B.D. 10.

(6) *R.* v. *The Brecknock and Abergavenny Canal Co.*, 111 E.R. 395.

(7) *R.* v. *Central Professional Committee for Opticians* [1949] 2 All E.R. 519.

APPLICATION FOR *MANDAMUS*.

*G. S. Hill* for the applicants.

*T. S. Sinnathuray* (Crown Counsel) for the respondent.

*Cur. Adv. Vult.*

**Chua J.:** The applicants in this case are the Bukit Sembawang Rubber Company Ltd., a rubber-growing company, and the Sembawang Estates Ltd., a land development company.

The Bukit Sembawang Rubber Company Ltd. were seized of the land and premises known as Lot 143-1 of Mukim XIII, created by a Statutory Land Grant, situate in the district of Sembawang (which I will refer to as the said land). By an agreement for sale dated the 29th March, 1955, made between the Bukit Sembawang Rubber Company Ltd. and the Sembawang Estates Ltd., the Bukit Sembawang Rubber Company Ltd. agreed to sell and the Sembawang Estates Ltd. agreed to purchase *inter alia* the said land. The applicants have surrendered to Government the Statutory Land Grant and it was a term of the arrangement between Government and the applicants that the applicants would authorise Government to issue a new Title in favour of the applicants or their nominees as the applicants may from time to time require.

On the 3rd October, 1957, in exercise of his powers under section 8 of the Land Acquisition Ordinance (which I will refer to as the Ordinance) the Collector of Land Revenue (whom I will refer to as the Collector) gave notice to the Bukit Sembawang Rubber Co. Ltd. that the Government intended to take possession of the said land for a public purpose in accordance with a declaration dated the 23rd July, 1957, and published in the Government *Gazette* of the 2nd August, 1957.

In exercise of his powers under section 10 of the Ordinance, the Collector, on the 7th and